FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 633 of 2005
(Smt. Kusum Kashiram Waghmare & 6 ors. Vs. Shri Raimal Santhan, Akot)

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Mr. C.A. Joshi, Adv. for the appellants.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 3rd September, 2007

Heard Shri C.A. Joshi, the learned counsel for the appellants.

The appellants are the original defendants. A suit was filed by the plaintiff against the defendants for eviction and possession of the suit property. The appellants were the tenants in the suit property and, therefore, the respondent had sought permission from the Rent Controller under the provisions of Clause 13(3)(ii) and (vi) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949. The Rent Controller had granted the permission under the aforesaid clauses and, therefore, the respondent issued the quit notice to the appellants on 2/2/2000 which was duly served on appellants on 4/2/2000 and the tenancy of the appellants was terminated from the midnight of 29/2/2000.

The defendants denied the claim of the plaintiff.

The trial as well as the appellate Courts held

that the respondent/landlord was entitled to possession of the suit property as the tenancy of the appellants was duly terminated from the midnight of 29/2/2000 by the notice dated 2/2/2000. The Courts, consequently, decreed the suit filed by the plaintiff.

Shri C.A. Joshi, the learned counsel for the appellants, submitted that the suit filed by the Trust through its Managing Trustee was not maintainable as it is a settled position of law that all the trustees of the Trust should have joined in filing the suit against the tenant for possession of the suit property. He relied on a decision of this Court reported in **2005(1) All M.R. 484** to substantiate his aforesaid submission.

The submission made on behalf of the appellants cannot be accepted at this state. On a perusal of the written statement filed by the defendants, it is apparent that the defendants had not raised a plea to the aforesaid effect before the trial Court. It was not the case of the appellants- tenants that the suit filed by the plaintiff-Trust through its Managing Trustee was not maintainable as all the trustees had not joined as parties to the civil suit. The first appellant Court, therefore, rightly observed that the ratio laid down in the judgment reported in **2005(1) All M.R. 484** did not apply to the facts of this case. The first appellate Court was justified in holding that the suit filed the Trust through the President who had been authorized by the Trust by passing the resolution to file the instant suit, was maintainable. Moreover, it has been held in the judgment reported in

1986 Mh. L.J. 773 that Trust can sue through one of the trustees when possession is sought for from the trespasser. In the present case, the tenancy of the appellants was terminated by the notice dated 2/2/2000, with effect from 29/2/2000 and both the Courts held that the notice under Section 106 of the Transfer of Property Act was a valid notice and the possession of the appellants after 29th February, 2000, was not that of tenants, but was that of the trespassers. The ratio laid down in **1986 Mh.L.J. 773** would, therefore, squarely apply to the facts of this case. Even otherwise, in the absence of pleadings, plea raised at the second appellate stage, cannot be considered as the respondent would be greatly prejudiced if this plea is raised at this point of time. Had the said plea been raised in the written statement, the plaintiff would have got an opportunity to either join all the trustees in the civil suit, or point out to the Court that the suit as filed by the plaintiff was maintainable.

For the aforesaid reasons, the second appeal is dismissed with no order as to costs.

JUDGE

RMP